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BA AMY J. HUNLEY
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8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

9 IN AND FOR THE COUNTY OF COCHISE

10 STATE OF ARIZONA

11 Plaintiff,

12 vs.

13 ARIELLE ALDRICH,

14 Defendant.

) Case No. CR201900221

) JUDGE CARDINAL
) DIVISION I

) **RESPONSE TO MOTION TO
) REMAND**

15 COMES NOW THE STATE OF ARIZONA, by and through Brian M. McIntyre, Cochise
16 County Attorney, and Terisha Driggs, his Deputy, and responds to the Defendants Motion to
17 Remand to the Grand Jury for Redetermination of Probable Cause.

18 **I. Summary of Facts**

19 In March of 2018 officers began investigating the Defendant after an arrest involving an
20 individual that was in possession of methamphetamine. The arrested individual stated that she
21 had purchased the methamphetamine from the Defendant. Later that month officers received
22 information from a reliable, registered, confidential informant that illicit drugs were being sold
23 in the Sierra Vista area by a girl named "Arielle."

24 As officers continued their investigation into the Defendant, they discovered a Facebook
25 account belonging to her. The account had pictures of the Defendant and her family members.
26 In June 2018 officers again received information from a registered, reliable, confidential
27 informant that Arielle Aldrich was going to Tucson to "re-up" on heroin. "Re-up" is a common
28 term used to describe someone purchasing more illicit drugs. A separate informant provided



1 information that the Defendant had purchased more heroin on a trip to Tucson. The two
2 confidential informants are independent of each other and have no knowledge of the
3 information that each is providing, lending greater credibility to their statements.

4 United States Border Patrol (USBP) was asked to assist through the utilization of their
5 checkpoint license plate readers (LPR). USBP conducted surveillance at the Defendant's
6 apartment and identified a vehicle that was linked to the Defendant and was able to provide
7 information, through use of the LPR, that the vehicle had traveled to Tucson from Sierra Vista
8 and then back using different routes on numerous occasions.

9 On October 3, 2018 Amber Ayala was arrested and charged with illicit drug use and sales.
10 Officers authored search warrants for Ayala's Facebook and discover that Ayala and the
11 Defendant are friends and can be seen together in photographs taken and sent through
12 Facebook. Officers identify hundreds of messages sent between the two, including messages
13 regarding illicit drug use. On September 3, 2018 there is a conversation thread in which they are
14 discussing the cost of "half of dark" and "3 and a half ounces of g." The term "dark" is a
15 common term used to describe heroin and "g" is a common term used to describe
16 methamphetamine. At the end of the thread the Defendant responds, "Just give me whatever
17 I'm stressed and in a bad mood and feel like I'm prolly not being a good friend or drug dealer
18 right now I'm sorry."

19 In October, 2018 the Defendant's cell phone was taken as evidence and a search warrant
20 was executed on her phone. Officers found hundreds of text messages between the Defendant
21 and Carlos Diaz. Several of the text messages indicated that the Defendant was purchasing
22 large quantities of illicit drugs from Diaz and picking them up in Tucson. In one text message
23 the Defendant agrees to purchase 15 grams of heroin and a "half" of methamphetamine for
24 \$1,400. In another text a few days later the Defendant agrees to purchase 6 ounces of
25 methamphetamine for \$1,000. A few weeks later the Defendant asks Diaz "how much for the
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1 gun" and a few days later agrees to purchase a "half" of heroin for \$400 and \$900 worth of
2 methamphetamine. It should be noted that the Defendant is a prohibited possessor.

3 In January 2019 officers conducted a free talk with an individual that had pending felony
4 drug charges. During this talk, the individual states that the Defendant routinely travels to
5 Tucson and purchases a half pound of methamphetamine and heroin from Diaz and transports
6 the drugs back to Sierra Vista for resale. The individual provided a current address for the
7 Defendant (on Nevada Street) and stated that the Defendant is aware of law enforcement
8 surveillance and has become more precautions. In January officers conducted surveillance at the
9 residence provided to them during the free talk. They were able to positively identify the
10 Defendant and her co-defendant, Caleb Hodges, as being at the residence. The Defendant and
11 Hodges are in a romantic relationship. Later that month, officers met with a registered, reliable
12 confidential informant who told officers that the Defendant was selling heroin in the Sierra
13 Vista area, lives on Nevada Street, and is sometimes going to Douglas but has recently resumed
14 going to Tucson to pick up illicit drugs.

15 On February 12, 2019 during an investigation involving a male subject, officers discovered
16 that the male also purchases drugs from Diaz. The male stated that the Defendant and Hodges
17 also buy from Diaz and that they are the biggest dealers in Sierra Vista. Later that month
18 officers learn, from a reliable confidential informant, that the Defendant is soliciting the use of
19 vehicles from some of her customers in order to drive to Tucson and replenish her supply. One
20 vehicle described in particular is a 2011 Dodge Ram. The informant was able to provide the
21 license plate of the truck. Officers then obtained a search warrant for a GPS tracker to be placed
22 on the truck, and it was placed on the truck that same day. Around this same time officers
23 received information that the Defendant had a trip to Tucson scheduled and that she was
24 scheduled to make drug deliveries on her way back to Sierra Vista. Through the GPS tracking
25 officers located the truck at the Defendant's residence and on March 7th they observe the truck
26 leaving the Defendants residence and traveling to Tucson.
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On March 7, 2019 at approximately 4:50 am the truck traveled to Tucson and made multiple stops. Officers, working with USBP, are able to identify the driver as Hodges as the truck passed through a check point. That day officers had conducted a records check and discovered that Hodges, the Defendant, and a third passenger of the truck all have suspended licenses. Covert surveillance was then put in place and a traffic stop was conducted in Huachuca City by a marked patrol vehicle. The traffic violations included driving on a suspended license and a cracked windshield. A K-9 officer arrived on scene and a free air sniff of the vehicle was conducted. The K-9 had provided his handler with his final conditioned response, indicating that there was a presence of an odor that the K-9 had been trained to identify (marijuana, methamphetamine, cocaine, and heroin). Officers then conducted a search of the truck and discover two straws that appeared to have been used to ingest illicit drugs. The occupants were separated from the truck and from each other. Officers thoroughly searched the vehicle, removing paneling and seats but failed to locate any drugs. Based on the reliable information they had regarding the Defendant's activities, they obtained search warrants for the Defendant's residence and her person. First the residence was searched and officers found indicia of the Defendant and Hodges residing there. They additionally found the following: 2.96 grams of methamphetamine, smoking devices with residue, syringes, 190 empty seals, 4 operational digital scales, marijuana, 0.31 grams of heroin, and a rifle. At the hospital the Defendant refused to be exposed to radiation and was not cooperative with the x-ray search of her person pursuant to the warrant. It should be noted that the case officer has had dealing with associates of the Defendant who have been discovered to hide illicit drug in their vaginal cavities. Additionally, the officer knows that if drugs concealed in the vaginal cavity rupture, it could be life-threatening for the Defendant. The officers and hospital staff then attempted to conduct an MRI exam due to the Defendant's concerns regarding radiation. The Defendant was aggressively non-compliant. Due to the Defendant's non-compliance the officer obtained an additional search warrant. This was a night-time warrant that specifically permitted an





1 involuntary x-ray and involuntary body cavity search of the Defendant. The officers and
2 hospital staff conferred and agreed that an involuntary x-ray was the least invasive option and
3 proceeded accordingly. They discovered what appeared to be illicit drugs in the Defendant's
4 body. After some discussion the Defendant agreed to retrieve the item from her vaginal cavity.
5 The bag that the Defendant removed from her vaginal cavity contained 23.69 grams of heroin,
6 7.98 grams of methamphetamine, and pills that were later identified as Alprazolam, a
7 dangerous drug. (The Defendant, in jail calls to Lytle, admits to having 21 grams of heroin, 3
8 grams of methamphetamine, and 7 Alprazolam pills in her vaginal cavity). These circumstances
9 gave rise to the charges found in the indictment.

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11 **II. Legal Basis and Argument to Deny Defendant's Motion**

12 A grand jury proceeding may be challenged: ". . . only by motion for a new finding of
13 probable cause alleging *that the defendant was denied a substantial procedural right*, or that an
14 insufficient number of qualified grand jurors concurred in the finding of an indictment." Ariz. R.
15 Crim. Proc. 12.9(a) (emphasis added). A proper analysis of the present case requires specific
16 attention to the words "substantial procedural right" from the rule.

17 The grand jury is an independent body charged with investigating public offenses. A.R.S.
18 §§21-401 (2), 21-407. The purpose of the grand jury proceeding is not to determine the ultimate
19 issue of guilt or innocence, but rather to determine whether or not probable cause exists to believe
20 that a crime has been committed and that the person being investigated was the one who committed
21 it. A.R.S. § 21-413; State v. Baumann, 125 Ariz. 404, 610 P.2d 38 (Ariz. 1980); State v. Sanchez,
22 165 Ariz. 164, 797 P.2d 703 (Ariz. Ct. App. 1990). Because of the purpose of the proceeding,
23 many issues that are of crucial importance at trial have no relevance at the grand jury level. It has
24 been stated:
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1 The grand jury's primary function is to determine "whether probable cause exists to
2 believe that a crime has been committed and that the individual being investigated
3 was the one who committed it." State v. Baumann, 125 Ariz. 404, 408, 610 P.2d 38,
4 42 (1980). Simply put, the grand jury is not the place to try a case. Trebus v. Davis,
5 189 Ariz. 621, 625, 944 P.2d 1235, 1239 (Ariz. 1997).

6 Grand jury proceedings are not a "mini trial" and the Rules of Evidence do not apply in a
7 grand jury proceeding. Ariz. R. Evid., Rule 1101 (b); Marston's, supra. Evidence presented to a
8 grand jury need not be admissible in trial. State v. Fulminante, 193 Ariz. 485, 491, 975 P.2d 75, 81
9 (Ariz. 1999). The grand jury can make its determination based in whole or in part upon hearsay
10 evidence. Franzi v. Superior Court, 139 Ariz. 556, 679 P.2d 1043 (Ariz. 1984); State v. Bowling,
11 151 Ariz. 230, 232, 726 P.2d 1099, 1101 (Ariz. Ct. App. 1986). Defendants in grand jury
12 proceedings "...are not entitled to all the protections that are afforded defendants in jury trials."
13 O'Meara v. Gottsfield, 174 Ariz. 576, 578, 851 P.2d 1375, 1377 (1993).

14 The allegation that the presentation to the grand jury was misleading, biased and improper
15 is erroneous upon full review of the facts of the matter and the testimony offered by Detective
16 Eaton. Additionally, "issues such as witness credibility and factual inconsistencies are ordinarily
17 for trial." Trebus, 189 Ariz. at 625. Further, "[g]rand jurors have a right to hear all relevant, non-
18 protected evidence that bears on the case." Maretick v. Jarrett, 204 Ariz. 194, 197, 62 P.3d 120,
19 123 (2003).

20 When reviewing case law of instances where a motion for remand was granted due to the
21 defendant being denied a substantial procedural right, the grounds overwhelmingly fall into three
22 categories; 1. Failure to present exculpatory evidence, 2. Untruths, and 3. Other constitutional
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1 concerns including not reading or providing applicable statutes to the grand jury. Here, none of
2 those issues are alleged.

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4 **III. Detective Eaton's History Regarding Grand Jury Presentations Should be Stricken**

5 The State requests to strike from consideration the entirety of the section related to Detective
6 Eaton's history in regard to grand jury presentations (Motion to Remand, P. 6, Lines 12 through 28
7 and p. 7, Lines 1 through 7, and referenced attachments). This portion of the Motion lacks any legal
8 analysis and does nothing more than malign the State's witness. Additionally, A.R.S. Sup. Ct.
9 Rules, Rule 111(c)(1) states, "Memorandum decisions of Arizona state courts are not
10 precedential..." It would stand to reason that Arizona Superior Courts are not bound by the
11 doctrine of *stare decisis* as it pertains to other decisions and orders arising out of other Superior
12 Court cases. Such reasoning would be detrimental to the court's independent decision making and
13 flexibility in dealing with cases.

14 **IV. The Defendant's Due Process Rights to a Fair and Impartial Presentation of**
15 **Evidence were not Violated.**

16 In reviewing this section of Defense counsel's motion, it should be noted that no recording of
17 the grand jury presentation has been made available to either party. The record only consists of a
18 transcript that cannot depict tones, feelings, or mannerisms. Words used and quoted by Defense
19 counsel, including "enthusiasm," "boasting," and "manhunt" are found nowhere in the record.
20 Much like the arbitrarily emphasized words in Defense counsel's interpretation of the grand jury
21 testimony, this is nothing more than mere speculation.

22 These are serious crimes which the Defendant has been charged with and it is important for the
23 State to present a complete record of the investigation. In fact, "[g]rand jurors have a right to hear
24 all relevant, non-protected evidence that bears on the case." Maretick v. Jarrett, 204 Ariz. 194, 197,
25 62 P.3d 120, 123 (2003). Defense counsel's proposed testimony truncates the evidence that is
26 relevant to the case. In Crimmins a due process violation resulted because the grand jury was given
27 inaccurate testimony and the prosecutor omitted relevant instructions. Crimmins v. Superior Court,
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1 In & For Maricopa Cty., 137 Ariz. 39, 43, 668 P.2d 882, 886 (1983). Defense only claims that the
2 statements made by Detective Eaton were inaccurate in the conclusion but argues no specific
3 instances of inaccuracy in the body of the Motion. The Defense Motion never claims that evidence
4 should not have been presented because it was protected, or that any relevant instructions were
5 omitted. The instant case is distinguished from Crimmins because there, the Court found, "...the
6 omission of significant facts, coupled with the omission of instruction on statutes which give the
7 omitted facts their legal significance, rendered the presentation of the case against Crimmins less
8 than fair and impartial." Id.

9 Here, Defense counsel claims that recounting the investigation in detail constitutes improper
10 and biased testimony. There is no case law to support this assertion. Case law regarding conducting
11 grand jury in a fair and unbiased manner clearly points to the requirements of telling the truth, not
12 omitting relevant evidence, and assuring proper instruction of the law. (see O'Meara v. Gottsfeld,
13 174 Ariz. 576, 577-78, 851 P.2d 1375, 1376-77 (1993), Crimmins v. Superior Court, In & For
14 Maricopa Cty., 137 Ariz. 39, 43, 668 P.2d 882, 886 (1983)).

15 Defense counsels' arguments about "what should have been said" completely ignore the
16 autonomy of the grand jury in determining probable cause and what a Defendant should be indicted
17 for. Take for example the claim that the Detective should not have mentioned the fact that the
18 Defendant's driver's license was suspended (Motion at p. 8, Lines 14 through 20). The grand jury
19 has the right to determine what charges to indict in a grand jury proceeding and they had the right
20 to hear this evidence to determine whether they wished to indict the Defendant for the charge of
21 driving with a suspended license. The grand jury was informed at the beginning of the proceeding
22 that the proposed indictment was solely for their convenience and they could decide what charges
23 to indict on their own. In this case, they were entitled to hear evidence that Defendant, who was
24 operating a motor vehicle on public roadways, had her privilege to drive revoked, suspended or
25 cancelled within the State of Arizona.

26 In O'Meara, the Supreme Court stated that "due process only requires that the prosecutor read
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1 all relevant statutes to the grand jury, provide them with copy of those statutes to refer to during
2 deliberations, and ask if they want any statutes reread or clarified." O'Meara at 578, 851 P.2d at
3 1377. Here, the Defendant's due process rights were not violated. A thorough recounting of the
4 details of the investigation were proper.

5 **V. Other Acts are Not Precluded from Grand Jury Presentations**

6 This section of the motion pertaining to other acts is devoid of legal argument. "Evidence
7 presented at a grand jury need not be admissible at trial." State v. Fulminante, 193 Ariz. 845, 975
8 P.2d 75, 81 (1999). The exclusion/inclusion of other acts at trial is governed by the Rules of
9 Evidence, which are not applicable in grand jury proceedings. "Because the grand jury does not
10 finally adjudicate guilt or innocence, it has traditionally been allowed to pursue its investigative and
11 accusatorial functions unimpeded by the evidentiary and procedural restrictions applicable to a
12 criminal trial." O'Meara v. Gottsfeld, 174 Ariz. 576, 578, 851 P.2d 1375, 1377 (1993).

13 Regarding Detective Eaton's mention of the Defendant's drug paraphernalia charge, she was
14 convicted in CR2018-2269 of possession of drug paraphernalia. A.R.S. §13-3415(E) states that:

15 In determining whether an object is drug paraphernalia, a court or other authority
16 shall consider... prior convictions, if any, of an owner, or of anyone in control of
17 an object, under and state or federal law relating to any drug.

18 Given that the Defendant was accused of six counts of possession of drug paraphernalia, this
19 evidence is not only relevant, but would be permissible for a petit jury to consider.

20 The Defense takes issue with the presentation to the grand jury that the Defendant has prior
21 convictions from Ohio and that her Ohio Department of Corrections release card was discovered.
22 The grand jury was given the admonition that prior contact with police is not evidence of probable
23 cause in this matter except to the extent that it is an element of one of the charges. Here, the
24 Defendant's prior felony convictions are a necessary element of Count 13 – misconduct involving
25 weapons by possessing a weapon when the person is a prohibited possessor.

26 There is no legal basis that requires the exclusion of other acts when presenting an investigation
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1 to a grand jury.

2 **VI. The Discussion Regarding the Location of the Drugs is Relevant to the Charges**

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4 Defense counsel argues that the entire discussion regarding the illicit drugs found in the
5 Defendant's vaginal cavity is inappropriate, biased, prejudicial, and unnecessary. There is no legal
6 authority that requires the State to sanitize the facts of an investigation. The Defendant chose to
7 conceal illicit drugs in her vaginal cavity. She is charged with knowingly possessing of those drugs.
8 Unlike finding illicit drugs in someone's car, finding them in someone's body cavity is a strong
9 indicator that they "knowingly possessed" that item. The Defendant made no admissions regarding
10 the drugs, and therefore the State has an obligation to present the basis for the allegations.
11 Additionally, Count 11 and 12 arise out of the circumstances surrounding the Defendant's failure to
12 comply with the search warrant and the manner in which she failed to comply. The Defendant
13 became physically aggressive toward officers and hospital staff that attempted to carryout the
14 search warrant. The language from A.R.S. §13-2809, and included in Count 12, states, "preventing
15 the production of physical evidence by an act of force." The discussion of the location and
16 procurement of the drugs is a relevant matter for the grand jury to consider.

17 **VII. Questions posed by Grand Jurors Did Not Deny the Defendant of a Substantial**
18 **Procedural Right**

19 Here, the Defense simply recounts a question posed by a grand juror. There is no allegation that
20 the question is improper or argument of how it affected the Defendant's procedural rights.
21 "Significantly, the initiation and control of questioning "rests with the grand jury and not the
22 prosecutor." Gershon v. Broomfield, 131 Ariz. 507, 509, 642 P.2d 852, 854 (1982), quoted in
23 Crimmins, 137 Ariz. at 44, 668 P.2d at 887." Maretick v. Jarrett, 204 Ariz. 194, 197, 62 P.3d 120,
24 123 (2003). This section should be stricken as it bears no relevance to the matter at hand and is
25 superfluous.

26 **VIII. Conclusion**

27 Significant portions of the Defense Motion lack legal analysis or basis. The vast majority of
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1 the arguments made are based on mere speculation of Detective Eaton's mannerisms during his
2 presentation of the investigation. There is nothing in the record to indicate that Detective Eaton
3 exhibited "a lot of hand gestures and wide-eyed looks" or that he was grandiose as the Defense
4 claims. This is nothing more than an attempt to malign the witness out of some sort of personal
5 contempt that Defense counsel appears to have toward Detective Eaton. Defense counsel
6 acknowledges that this is a serious matter that will have an impact on the Defendant for the rest of
7 her life but appears outraged by the thoroughness with which the investigation was presented to the
8 grand jury.

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10 The presentation to the grand jury did not deny the Defendant a substantial procedural right.
11 The presentation showed the Defendant's consciousness of guilt, the diligence the officers took in
12 conducting this investigation, and the extent of the Defendant's criminal activities. The State did
13 not present inaccurate testimony, nor did it present any testimony that is not permitted under the
14 case law pertaining to grand jury proceedings as outlined in the legal analysis above.

15 The State respectfully requests that this Court deny the Defendant's Motion to Remand as
16 the Defendant has not been denied a substantial procedural right.

17 RESPECTFULLY SUBMITTED this 7th day of August, 2019.

18 COCHISE COUNTY ATTORNEY

19 By: Terisha Driggs
20 Terisha Driggs
21 Deputy County Attorney

22 Copy of the foregoing mailed/delivered/faxed this ____ of August, 2019 to:

23 The Honorable Laura Cardinal
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